CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	√ Force	☐ Discourt.	□ U.S.
Jean Paul Lozada		Squad #9	201706223	☐ Abuse	_	<u>—</u>
Jean Faul Lozada		Squau #9	201700223	Abuse	□ O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Monday, 07/24/2017 9:24 PM		876 Utica Avenue		67	1/24/2019	1/24/2019
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCl	RB
Tue, 07/25/2017 3:15 AM		IAB	Phone	Tue, 08/03	1/2017 10:51 AM	Í
Complainant/Victim	Туре	Home Addre	ess			
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. SGT Robert Falcone	01052	948950	067 PCT			
2. POM Melvin Carpio	19803	958371	067 PCT			
3. POM Miguel Vanbrakle	28743	955616	067 PCT			
4. POM Robert Lodestro	30338	950762	067 PCT			
5. POM John Nemeth	17897	955259	067 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POF Corey Anderson	07959	948616	067 PCT			
Officer(s)	Allegatio	on		Inve	estigator Recon	nmendation
A.SGT Robert Falcone	Force: Se	Force: Sergeant Robert Falcone struck §87(2)(b) with				
	an asp.		[0.07/01/4]			
B.POM Melvin Carpio	Force: Police Officer Melvin Carpio struck § 87(2)(b) with an asp.					
C.POM Miguel Vanbrakle	Force: Police Officer Miguel Van Brakle used pepper spray against § 87(2)(b)					
D.SGT Robert Falcone	Force: Sergeant Robert Falcone used physical force against § 87(2)(b)					
E.POM Melvin Carpio	Force: Police Officer Melvin Carpio used physical force against \$87(2)(b)					
F.POM Miguel Vanbrakle	_	olice Officer Miguel Va	n Brakle used physic	cal force		
G.POM John Nemeth	Force: Poagainst	olice Officer John Neme 87(2)(b)	eth used physical for	ce		
H.POM Robert Lodestro	Force: Police Officer Robert Lodestro used a Taser against § 87(2)(b)					

Case Summary

On July 25, 2017, Sgt. Robert Falcone of the 67th Precinct filed this complaint on behalf of with the Internal Affairs Bureau via telephone, generating IAB log number 2017-28952. On August 1, 2017, IAB forwarded this complaint to the CCRB.

On July 24, 2017, at approximately 9:24 p.m., police responded to UT Deli, located at 8/6 Utica
Avenue in Brooklyn, after \$87(2)(b) called 911 to report that \$87(2)(b) had
menaced him with a knife in his store. Sgt. Robert Falcone and PO Melvin Carpio of the 67 th
Precinct encountered §87(2)(b) on the sidewalk outside the store and ordered him to take his
hands out of his pockets, put them behind his back, and get on the ground. Instead, he clenched
his fists and took a fighting stance. Sgt. Falcone and PO Carpio each struck \$87(2)(0) in his
arms and legs with their asps approximately twice (Allegations A and B). These asp strikes had
no apparent effect on §87(2)(b) who pushed a pile of boxes on the curb towards the officers
and placed his back against a glass storefront. PO Miguel Van Brakle and PO John Nemeth of the
67 th Precinct arrived on scene, and PO Van Brakle pepper sprayed §87(2)(b) (Allegation C).
grabbed onto a nearby railing. All four officers then pulled 887(2)(b) off of
the railing and down to the ground (Allegations D, E, F, and G). PO Robert Lodestro and PO
Corey Anderson of the 67 th Precinct arrived on scene, and §87(2)(b) continued to refuse to
put his hands behind his back. PO Lodestro fired his Taser prongs into \$87(2)(b) s back and
discharged one Taser cycle (Allegation H). The officers then handcuffed §87(2)(b)
was transported via ambulance to § 87(2)(b) to have the Taser prongs
removed, and he was charged with § 87(2)(b), § 87(2)(a) 160.50

Surveillance footage obtained from UT Deli (Board Review 01) shows Sgt. Falcone and PO Carpio striking with their asps. This footage is embedded below and can also be found in IA#153.



201706223_20171102_1754_DM.mp4

This case was reassigned from Inv. Julian Phillips to the undersigned on September 14, 2017.

Mediation, Civil and Criminal Histories

- This case was deemed ineligible for mediation due to \$87(2)(b) s arrest
- As of October 27, 2017, \$87(2)(b) has not filed a notice of claim in regards to this incident (Board Review 02)/

§ 87(2)(b)	

Page 2

CCRB Case # 201706223

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving \$87(2)(b) (Board Review 04).
- Sgt. Falcone has been a member of the NYPD for seven years and is the subject of two additional CCRB allegations involving two cases with no substantiated allegations. § 57(2)(9)
- PO Carpio has been a member of the NYPD for two years and is not the subject of any additional CCRB allegations (Board Review 05).
- PO Van Brakle has been a member of the NYPD for four years and is the subject of 15 additional CCRB allegations involving six cases with no substantiated allegations (Board Review 05).
 - O PO Van Brakle is the subject of Force: Physical Force allegations in case numbers 201502958 (exonerated), 201700442 (complainant uncooperative), and 201707238 (currently under investigation).
- PO Nemeth has been a member of the NYPD for two years and is not the subject of any additional CCRB allegations (Board Review 05).
- PO Lodestro has been a member of the NYPD for six years and is the subject of three additional CCRB allegations involving three cases with no substantiated allegations (Board Review 05).
 - o PO Lodestro is the subject of a Force: Nonlethal Restraining Device allegation in case number 201702611 (complaint withdrawn).

Potential Issues

• Contact attempts to \$87(2)(b) were exhausted, and the investigation was unable to establish contact with \$87(2)(b) \$87(2)(g)

Findings and Recommendations

Allegation A – Force: Sergeant Robert Falcone struck \$\frac{8}{3}(2)(b)\$ with an asp.

Allegation B – Force: Police Officer Melvin Carpio struck \$\frac{8}{3}(2)(b)\$ with an asp.

Allegation C – Force: Police Officer Miguel Van Brakle used pepper spray against \$\frac{8}{3}(2)(c)\$

Allegation D – Force: Sergeant Robert Falcone used physical force against \$\frac{8}{3}(2)(c)\$

Allegation E – Force: Police Officer Melvin Carpio used physical force against \$\frac{8}{3}(2)(c)\$

Allegation F – Force: Police Officer Miguel Van Brakle used physical force against \$\frac{8}{3}(2)(c)\$

Allegation G – Force: Police Officer John Nemeth used physical force against \$\frac{8}{3}(2)(c)\$

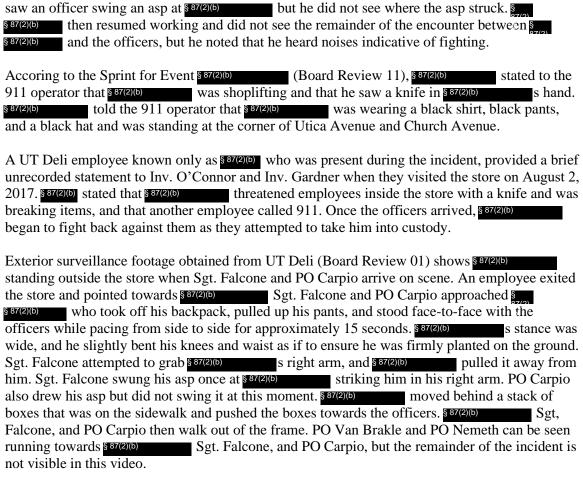
Allegation H – Force: Police Officer Robert Lodestro used a Taser against \$\frac{8}{3}(2)(c)\$

stated that he called 911 because \$\frac{8}{3}(2)(c)\$ entered UT Deli although he was banned from the store by court order. He knew \$\frac{8}{3}(2)(c)\$ to carry a knife in his backpack,

Page 3

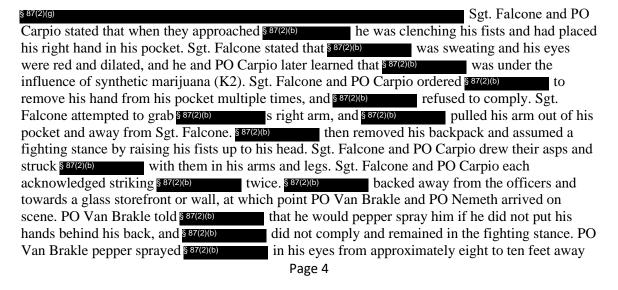
but he did not actually see the knife on this occasion. § 87(2)(b) exited the store and § 87(2)(b) heard Sgt. Falcone and PO Carpio tell § 87(2)(b) to put his hands up. §

raised his arms as though he was preparing to fight the officers. § 87(2)(b)





201706223_20171102_1754_DM.mp4



have been effect nearby railing we unable to hande his elbows and stated that they and "carried" his continued to refer scene and told did not comply three feet away. Taser cycle. The him. A box cutt Taser darts were	ctive. \$87(2)(b) clowith both hands. PO Carcuff the other arm at this kicked him once in his bringing him down to the pulled him down to the im down to the ground. Guse to surrender his har 67(2)(b) that he wand tried to stand up, so and tried to stand up, so and tried to stand up, so are officers were then ableer was recovered from the total to the triangle of triangle of the triangle of triangle of the triangle of triangle of the triangle of triang	er than him and going "hand sed his eyes, leaned his head rpio handcuffed one of some armonent. Sgt. Falcone stated leg. All four officers acknown ground. Sgt. Falcone, PO ground, while PO Carpio some stated was face-do not to the officers. At this proposed to the officers. At this proposed by Tased if he did not a PO Lodestro fired his Tased 187(2)(b) some some some some some some some some	s arms, but he d that \$87(2)(0) s wledged grabbing \$7(2)(0) when the distribution of t	onto a ne was wung emeth his legs ed on mately one dcuff
	hreat, Resistance, and Instent with their statemen	njury Reports (Board Reviewnts.	w 06, 07, 08, 09, 10) w	ere
the safety of a reasonable to pl	nember of the service o lace a person in custody	21-01, "Force may be used r a third person, or otherwise or to prevent escape from a reasonable under the circum	e protect life, or when it custody. In all circumst	it is ances,
§ 87(2)(g)				
Squad: 9				
Investigator:	Cianoturo	Print	Date	
Squad Leader:	Signature	rimi	Date	
Squau Deauer.	Title/Signature	Print	Date	
Reviewer:	Title/Signature	Print		
	-	Page 5	= :•	

CCRB Case # 201706223